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CAPE COD COMMISSION

Date: July 7, 2011

To: Stuart Bornstein
Gladstone, LLC
297 North Street
Hyannis, MA 02601

From: Cape Cod Commission

Re: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Sections 12, 13, 13(a), and 23
Cape Cod Commission *Enabling Regulations,* Sections 3, 5, 7 & 9

Applicant: Gladstone, LLC

Property Owner: Gladstone, LLC

Project: 31 Aaron's Way/Gladstone LLC

Project Location: 31 Aaron's Way, West Yarmouth

Project #: TR/HDEX/LR 11002

Map and Parcel: 73/9.2.3

Barnstable Registry of Deeds: Lot 20A Book 18952 Page 298
Plan Book 593 Page 8

Barnstable Land Court: Lot 20 Certificate of Title # 153578
Land Court Plan # 37201-D

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves, with conditions, the application of Gladstone LLC (Applicant) as represented by Stuart Bornstein, as a Development of Regional Impact (DRI) Hardship Exemption (HDEX) pursuant to Sections 12, 13, 13(a) and 23 of the Commission Act (Act), Chapter 716 of the Acts of 1989, as amended, for a proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth, MA subject to a Limited DRI scope as determined by an authorized Subcommittee in a decision dated March 17, 2011.

The Limited scope of the DRI was granted pursuant to Sections 3, 5, and 7 of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2, 2010) and limited the scope of DRI review to the Regional Policy Plan issue areas of Energy, Hazardous Waste Management, Land Use, Open Space and Wetlands issue areas of the 2009 RPP, as amended in May 2010 and effective June 2010. The DRI/Hardship Exemption decision is rendered pursuant to a unanimous vote of the Commission on July 7, 2011.

PROJECT DESCRIPTION

The proposed project that is the subject of this DRI/HDEX decision is a proposal to move 17,150 square feet of a 23,000 square foot metal frame building currently located at 77 High School Road Extension, Hyannis to a vacant site located at 31 Aaron's Way, West Yarmouth. The lot on which the building currently sits was sold to the Hyannis Fire Department, and the existing 23,000 square foot building must be moved or demolished to allow for the expansion of the Fire Department. The subject property at 31 Aaron's Way in West Yarmouth is comprised of one lot, encompassing approximately 1.15 acres or 50,000 square feet, zoned *B3*. The Limited DRI application states that the proposed use will be predominately warehouse (93%), with the remainder to include a support office and a showroom.

PROCEDURAL HISTORY

The project was referred to the Commission on August 31, 2010 by the Building Commissioner for the Town of Yarmouth. In a letter dated September 2, 2010, Commission staff informed the Applicant that the project had been referred to the Commission as a DRI. The Commission received a Limited DRI application from the Applicant on September 13, 2010. In letters dated September 29, 2010, November 18, 2010, December 20, 2010, Commission staff informed the Applicant that the Limited DRI application was incomplete. On December 30, 2010, Commission staff advised the Applicant through a letter that the DRI hearing period would close on January 26, 2011. The DRI hearing period was opened by hearing officer on October 29, 2010. On January 6, 2011, the Applicant informed Commission staff by Email of a withdrawal of the project at the local level. On January 20, 2011, the full Commission accepted the Applicant's withdrawal of the project from Commission review. On January 25, 2011, Commission staff received a referral of the project as a DRI from Yarmouth's Building Commissioner. On January 31, 2011, Commission staff received an Email from the Applicant resubmitting the Limited DRI application for consideration. The Limited DRI application was deemed substantively complete to proceed to a public hearing on February 23, 2011.

The Limited DRI scoping hearing was opened by a duly noticed public hearing on February 24, 2011 at Fire Station #2, 340 Route 6A, Yarmouthport, MA. At this hearing, the Subcommittee voted unanimously that the proposed 17,150 square foot warehouse to be located at 31 Aaron's Way, West Yarmouth shall be scoped for Limited DRI review in the RPP issue areas of Land Use, Wetlands, Open Space, Hazardous Wastes Management and Energy. The Subcommittee also voted unanimously to direct Commission staff to draft a Limited DRI scoping decision for the proposed warehouse project and to continue the public hearing to March 17, 2011 beginning at 1:30 PM at the Cape Cod Commission's office in Barnstable, MA for the purpose of reviewing a draft written Limited DRI scoping decision.

At the continued public hearing on March 17 2011, the Subcommittee reviewed and corrected a draft written Limited DRI scoping decision and voted to include the Regional Policy Plan issue areas of Land Use, Wetlands, Open Space, Hazardous Waste Management and Energy in the DRI review. The Subcommittee approved the draft decision, as amended and closed the hearing and the record on the Limited DRI Review.

The Applicant submitted a HDEX application on April 15, 2011. Supplemental HDEX application materials were submitted to the Commission on May 5, 2011. In accordance with the Commission Act (Act), a Hearing Officer opened the DRI hearing period on March 25, 2011. The DRI/HDEX application was deemed substantively complete on June 2, 2011. The public hearing on the HDEX application/request was opened by a substantive hearing on June 2, 2011.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record

Materials from Cape Cod Commission	***Date Sent***
Email, Heather McElroy (HM) to Karen Green (KG): Development envelope and open space issues	8/24/10
Email, Glen Cannon (GC) to Andrea Adams (AA): Transportation comments	8/30/10
Certified Letter with attachments, AA to Stuart Bornstein (SB): DRI referral of project	9/2/10
Telephone Log, AA with Deirdre Kyle (DK): Concerns about DRI referral and Limited Review (LR) timelines	9/8/10
Email, AA to Commission staff: Comments on LR application completeness	9/15/10
Email, AA to Commission staff: Comments on LR application completeness	9/15/10
Letter, AA to SB: LR application not complete	9/29/10
Letter from Gail Hanley, Commission Clerk, to Stuart Bornstein (SB): Noticing pro forma hearing	10/12/10
Hearing Notice	10/29/10
Hearing Officer Minutes	10/29/10
Email, AA to KG: Application is not complete	11/3/10
Letter, AA to SB: LR application is not complete	11/18/10
Email, Ryan Christenberry (RC) to AA: LR application completeness	12/15/10
Email with attachment, AA to DK: Letter on application completeness	12/20/10
Letter, AA to SB: Letter on application (Also sent as Email on 12/20/10)	12/20/10
Letter, AA to SB: Application incomplete, hearing timeline, close of hearing	12/30/10
Email, RC to AA: LR application complete for Energy issues	1/11/11
Email, Kristy Senatori (KS) to KG: Update on status or withdrawal	1/11/11
Email, AA to GC and KS: Withdrawal of application before full Commission	1/20/11
Copy of Cape Cod Commission Agenda for 1/20/11: Acceptance of project withdrawal	1/20/11
Email, KS to KG: Status of re-referral of project	
Hearing Notice – Close hearing	1/26/11

Certified Letter with attachments, AA to SB: DRI referral and hearing timeline	1/27/11
Fax, AA to Yarmouth Fire Department: Room reservation forms	2/2/11
Email, AA to Dan Ojala, DownCape: Exterior lighting	2/2/11
Email, AA to KG: Hearing date and location	2/3/11
Letter, GH to SB: Hearing notice	2/7/11
Email, AA to DK: Copies of applicant's information for Subcommittee	2/8/11
Email, AA to Commission staff: Distributed copy of Mr. Marasco's Email	2/9/11
Email, AA to DK: Copy of Dr. Marasco's comments	2/9/11
Email, AA to Dr. Marasco: Inclusion of comments in the record	2/9/11
Email, AA to Subcommittee Members: Scheduling of site visit	2/14/11
Email, AA to DK: Site visit and information for Subcommittee	2/14/11
Staff Report on Limited Review Scope	2/16/11
Email, AA to KG and DK: Copy of staff report	2/16/11
Cover Memo, AA to Subcommittee: Information on site visit; Hearing date and location; Copies of information; Copies of Comment letters	2/16/11
Email, with attachment: AA to Dr. Marasco – Copy of staff report	2/17/11
Email and Letter, AA to DK/SB: LR application substantially complete	2/23/11
Email, AA to Curtis Sears: Copy of 2/16/11 Staff Report	2/24/11
Hearing Outline/Agenda	2/24/11
Staff Report Power Point (Presented at public hearing)	2/24/11
Hearing Notice	2/24/11
Meeting Notice	2/24/11
Minutes of Public Hearing	2/24/11
Cover Memo, AA to Subcommittee: Distribute copy of draft Minutes of 2/24/11 hearing and copy draft written decision	3/10/11
Email, AA to DK, KG and Terry Sylvia: Distribute copy of draft written decision	3/10/11
Email, AA to KG: Applicant's duty to provide Town with materials	3/10/11
Minutes of Continued Public Hearing	3/17/11
Hearing Notice for Continued Public Hearing	3/17/11
Minutes of Public Hearing	2/24/11
Notice of Continued Hearing	3/17/11
Minutes of Continued Hearing	3/17/11
3/17/11 Limited DRI Scoping decision	3/17/11
Email, AA to KG: Scheduling of Hearing on DRI	3/22/11
Email, AA to DK: Meeting with Commission staff on wetlands and open space issues	3/22/11
Email, AA to DK: Fee calculations	3/24/11
Hearing Notice	3/25/11
Minutes, Hearing Officer	3/25/11
Letter, AA to Applicant: Standards for Hardship Exemptions, compliance with 3/17/11 Scoping decision, and mtg w/staff on 3/24/11	4/1/11
Email, AA to KG: Copy of 4/1/11 letter to Applicant	4/8/11
Email, AA to DK: Fee calculations	4/13/11
Email, AA to Commission staff: Application completeness review	4/15/11
Letter, AA to Applicant: Clarification of Hardship Exemption request	4/27/11

Email with attachs: AA to DK: Letter on Application completeness	4/27/11
Email, AA to DK: Revised version of Hardship Exemption/red line	5/5/11
Email, AA to DK: Second discussion of redline HDEX application	5/5/11
Memo, AA to Police Department: Room use form	5/9/11
Email, AA to KG: Inquiry about letter from Board of Selectmen	5/10/11
Email, AA to Subcommittee: Scheduling hearing and site visits	5/10/11
Phone Record, AA to DK: Site visit protocols and compliance with 3/17/11 Scoping decision	5/17/11
Email, AA to Subcommittee: Scheduling hearing and site visits	5/18/11
Email, AA to KG: Confirmation that Town received Applicant's info	5/18/11
Email, AA to KG: Comments on project per LCP and Bylaws, and Applicant's information	5/18/11
Email, AA to KG and DK: Design review comments, project still under Commission review, hearing and record must close on 6/22/11	5/19/11
Cover Memo, AA to Subcommittee: Materials for 6/2/11 hearing	
Staff Report	5/26/11
Email, AA to Subcommittee: Site visit directions and directions to hearing	5/26/11
Email, AA to Commission staff: Copy of staff report	5/26/11
Email, AA to KG, DK and Dan Ojala: Copy of staff report	5/26/11
Email, AA to KG, DK and Dan Ojala: 6/2/11 public hearing, and that project information must be submitted before close of hearing and record on 6/22/11	
Email, AA to Subcommittee: Hearing date and location, and site visits	5/26/11
Email, AA to Subcommittee: Copy of staff report and that a packet of information coming by mail	5/26/11
Hearing Notice	6/2/11
AA to Applicant: Letter deeming application complete	6/2/11
Hearing Outline	6/2/11
Public Hearing Minutes (Draft)	**6/2/11**
Hearing Notice (Continued hearing)	6/9/11
Public Hearing Minutes (continued) (Draft)	**6/9/11**
Copy of Section 300, Yarmouth Zoning Bylaw, as amended through 5/3/10 (Submitted to record by Commission staff on 6/9/11)	6/9/11
Draft Written Limited DRI/DRI/HDEX decision	6/17/11
AA to Subcommittee: Cover Memo with attachments: Draft decision; Two 6/14/11 staff Emails and 6/15/11 staff Email; Draft Minutes from 6/2/11 hearing; Copy of 6/2/11 letter deeming application complete; Large size Landscape & Layout Plan as drawn on by Dan Ojala at 6/9/11 hearing; 6/17/11 Email from Dan Ojala with revised Landscape & Layout Plan and elevations showing solar features and awnings; 6/15/11 Email from KG on meeting with Yarmouth's Building Commissioner	6/17/11
Email with attachmt, AA to DK, Dan Ojala, KG: Copy of draft decision	6/17/11
Email with attachmt, AA to DK, Dan Ojala, KG: Second copy of draft decision	6/17/11
Email with attachmt, AA to Tersa Busby, Holly Supply: Copy of draft decision	6/20/11

Email, AA to DK, KG, Dan Ojala, Ryan Christenberry, Heather McElroy: Follow up to 6/9/11 hearing	6/9/11
Email, Ryan Christenberry to Dan Ojala: Passive solar and windows	6/14/11
Email, AA to Dan Ojala, DK and KG: Compliance with MPS WM1.4	6/15/11
Email, Ryan Christenberry to Dan Ojala: Confirmation that elevations and solar PV system will satisfy MPS E1.5 Waiver Option C	6/20/11
Draft of Proposed Energy Findings and Conditions	6/20/11
Email w/attachmt, AA to DK, KG and Dan Ojala: Copy of draft Energy findings and conditions	6/21/11
Hearing Notice	6/22/11
Hearing Officer Minutes	6/22/11
Email, AA to DK, Dan Ojala, KG: Copies for final hearing	6/22/11
Meeting Notice	6/23/11
Hearing Notice	7/7/11
Materials from Applicant	***Date Received***
Cover letter and attachments, Stuart Bornstein (SB): Application cover sheet; Fee Waiver Request Form; Check for $2,500; Project Description; Legal Description, MHC Project Notification; NHESP Letter (7/12/10); Locus Map; Copy MHC Response (9/10/10); Abutters List; Reduced size Site Plans (7/8/10)	9/13/10
Large size site plan set (4 sheets) (2 copies of the set)	9/15/10
Fax, Cover letter and attachments, Deirdre Kyle (DK): 4 black/white photos of building in Hyannis; Site Plan (6/4/10); MHC Response (9/10/10); Copy of Order of Conditions (8/20/10)	10/27/10
Hard Copy, Cover letter and attachments, DK: 4 color photos of building in Hyannis; Site Plan (6/4/10); MHC Response (9/10/10); Copy of Order of Conditions (8/20/10); Water use data (10/29/10); Estimated nitrogen loading	10/29/10
Cover letter and attachment, DK: Building Elevation drawing	11/15/10
Email and attachment, DK: Scaled building elevation drawing	11/16/10
Cover letter and attachments, DK: Exterior materials color chips chart; Chart on solar reflective index; Brochure on JM Fiberglass insulation; Cut sheet for RUUD wallpack exterior light; Department of Environmental Protection (DEP) Stormwater Report Checklist (dated 7/22/10); Stormwater Management System Narrative (DownCape Engineering – dated 7/22/10); Drainage Calculations (DownCape Engineering – dated 7/22/10); Construction Erosion/Sedimentation Control Plan and Stormwater System Inspection Schedule (DownCape Engineering – dated 7/22/10)	12/8/10
Large size plan set (4 sheets) (1 copy)	12/8/10
Email, DK to AA: Application completeness	12/14/10
Email with attachments, DK to AA: Energy resources information; 12/27/10 Email response on energy use from Grant Elgin to DK; Copy of ANSI/ASHRAE Standard 90.1-2007 (pgs 18, 23, 29, 30); Color brochure from Kingspan Solar PV systems	1/5/11
Email, DK to Karen Green, Town of Yarmouth: Withdrawal of project	1/6/11
Email, DK to AA: Energy resources; Target Energy Performance results	1/6/10
Email, DK to AA: Withdrawal of project	1/20/11

Email, DK to AA: Scheduling of public hearing	1/25/11
Email, DK to AA: Request to reuse Limited Review application	1/31/11
Cover Memo and attachments, Dan Ojala, DownCape, to AA: Revised plans (2/7/11); Low Impact Landscaping Plan (2/7/11); Photometrics Plan (2/8/11); Nitrogen Loading calculations (10/29/10); Water Use data (10/29/10); Copy of Yarmouth Zoning (Section 406); Updated Stormwater Plan (2/8/11) (*Also provided on CD*)	2/8/11
Email, DK to AA: Copies of applicant's information for Subcommittee	2/15/11
Cover letter, DK to AA: Cover to copies of applicant's information for Subcommittee	2/16/11
Color Aerial photo of proposed project site (Used/Distributed to Subcommittee at public hearing)	2/24/11
Email, DK to AA: Meeting with Commission staff on open space and wetland buffer issues	3/22/11
Email, DK to AA: Discussion of Hardship Exemption filing and fees	4/13/11
Hardship Exemption application with attachments and fee payment: Hardship narrative, 4/14/11 letter from NSTAR on easement, 8/24/04 deed relative to easement	4/15/11
Email, DK to AA: Scheduling of hearing	4/27/11
Revised Hardship Exemption application including building cost and income estimate (by Email)	5/5/11
Email, DK to AA: Revised Hardship Exemption application	5/5/11
Revised Hardship Exemption application (hard copy)	5/9/11
DK to AA: Cover letter for Subcommittee packets including list of items submitted by Applicant for Subcommittee	5/25/11
Dan Ojala: Revised *Landscape & Layout Plan*, marked up in red pen, showing proposed reductions in development to reduce impacts to wetland buffer and open space requirement (Marked up and submitted at 6/9/11 hearing)	6/9/11
Email, DK to AA: Meeting with Building Commission on further revisions to site tentatively for 6/21/11	6/15/11
Email w/attachments: Dan Ojala to AA: Reduced size revised *Layout & Landscape Plan* and elevations showing solar features	6/17/11
Email w/attachs: Dan Ojala to AA: Reduced size site plan set and updated elevations showing windows rotated 90 degrees	6/22/11
Materials from Public Agencies/Towns/State/Federal	***Date Received***
Email, Terry Sylvia, Town Planner to Kristy Senatori (KS); Preliminary Site Plan Review comments	7/12/10
Letter, Division of Fisheries & Wildlife, Natural Heritage and Endangered Species Program comments	7/12/10
Email, Karen Greene (KG), Yarmouth Director of Community Development, to KS: Questions on project referral and Conservation Commission actions	8/18/10
KG to James Brandolini (JB) and others; Project referral to Cape Cod Commission	8/19/10
DRI Referral Form	8/31/10
Email, KG to JB: Project withdrawal at local level	1/11/11
Email, with attachment, JB to KS: DRI referral	1/25/11

Email, KG to AA: Copies of Applicant's materials	3/10/11
Email, KG to AA: Scheduling hearing on Limited Scope	3/22/11
Email, KG to AA: Information meeting with Planning Board	3/28/11
Email, with attachment: Mary Waygan, Dept. of Community Development, Memo from Planning Board and CEDC to Selectmen	4/14/11
4/13/11 Memo from Planning Board and CEDC to Selectmen (hard copy)	4/15/11
Email, KG to AA: Board of Selectmen to discuss project on 4/26/11	4/21/11
Email, KG to AA: Letter on project from Board of Selectmen	5/10/11
Email, Elizabeth Hartsgrove, Executive Assistant to Town Administrator, 5/4/11 Memo from Mr. Johnson-Staub	5/13/11
Email, with attachments, KG to DK: Design Review: 4/13/11 Memo and Yarmouth Design Review standards	5/19/11
Email, KG to AA: Comments on project relative to LCP and Bylaws	5/19/11
Email, KG to AA: Scheduling of information Site Plan Review meeting and when information must be submitted for record	5/26/11
Agenda of Yarmouth Design Review Committee meeting	6/2/11
Design Review Comment Sheet	6/8/11
Email, KG to AA: Follow up to 6/9/11 hearing and design review and meeting with Building Commissioner	6/15/11
Materials from General Public	***Date Received***
Email, William Marasco: Comments on project	2/9/11

TESTIMONY

March 25, 2011 Hearing Officer

Ms. Andrea Adams, Cape Cod Commission Senior Regulatory Planner, acted as a Hearing Officer on March 25, 2011 at 10:00 AM the Cape Cod Commission office to open a pro-forma hearing on a this DRI project. The project Applicant is Gladstone, LLC represented by Mr. Stuart Bornstein. The project involves moving a 17,150 square foot structure from Hyannis to 31 Aaron's Way, West Yarmouth. The proposed use is warehouse. The Hearing Officer hereby opened a DRI hearing on the project. No presentations, testimony or substantive action was taken on the project at this time.

June 2, 2011 Public Hearing

A public hearing was held at 7:00 PM on June 2, 2011 at the Yarmouth Police Department, One Brad Erickson Way, West Yarmouth, MA. Mr. Richard Roy opened the hearing at 7:09 PM. He noted that the scope of issues under review have been limited to Energy, Hazardous Waste Management, Land Use, Open Space and Wetlands issue areas of the Regional Policy Plan. Mr. Roy proceeded to collectively swear in everyone who wished to speak.

Mr. Roy invited Andrea Adams, Senior Regulatory Planner for the Commission, to present the staff report.

Ms. Adams, using a PowerPoint presentation, noted that to date she has not received any communication from members of the public and that in the subcommittee's packet of materials they have a letter from her dated June 2, 2011 deeming the application complete. She then provided a description of the project. She noted that this addition qualifies as a DRI under

Section 3(e)(i) of the *Enabling Regulations* as a construction of a commercial building with a gross floor area greater than 10,000 square feet. The subcommittee determined the scope of DRI review through a public hearing and granted Limited DRI review per Section 5 of the *Enabling Regulations* on March 17, 2011, which limited review to the issue areas of Energy, Hazardous Waste Management, Land Use, Open Space and Wetlands.

Ms. Adams noted that in order for the project to be approved as a DRI under Section 7(c)(viii) of the *Enabling Regulations*, the project must be found consistent with the Commission Act, the Regional Policy Plan Minimum Performance Standards, Districts of Critical Planning Concern, Municipal Development Bylaws, the Local Comprehensive Plan, and the probable benefits of the proposed development must be greater than the probable detriment with Best Development Practices to be taken into consideration in this determination.

She stated that the Applicant has requested Hardship Exemption relief from the Open Space and Wetlands sections of the Regional Policy Plan, per Section 9 of the *Enabling Regulations*. Ms. Adams noted that the Commission may grant relief in whole or in part from the Regional Policy Plan and the Minimum Performance Standards and this can be done through conditions in the decision. However, she stated that the project should comply to the maximum extent feasible with the Minimum Performance Standards and that any relief granted shall relate directly to the nature of the identified hardship and shall be the minimum necessary to address it. The Commission must find that a literal enforcement of the provisions of the Act would involve a substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or derogating from the intent and purpose of the Act.

Ms. Adams then provided an overview of Staff's analysis of the project, covering the RPP issue areas of Land Use. Ms. Adams noted Best Development Practice (BDP) LU1.3 encourages reuse of existing buildings.

Ms. Adams noted that in relation to Wetlands, the site is mapped as a Significant Natural Resource Area (SNRA) and a Wellhead Protection Area (WPA), and that on the site visit on May 31st, she pointed to the fence just off the site that indicated the edge of the wetland buffer. She stated that the project development, including parking and driveways, would be in the 100-foot wetland buffer and that development in the wetland buffer is in conflict with MPS WET1.2 and MPS WET1.4 and also with the RPP interest to protect wetlands and wetland buffers. Therefore, the project substantially deviates from the MPS in this area. She stated that the Applicant has requested a Hardship Exemption in this area, but staff feels that the Applicant has not demonstrated that the disturbance has been minimized and points to the comments from the Planning Board and CEDC on reduction of impervious area. She also noted that while there is an NSTAR easement in that area, there are no current plans to use the easement area by NSTAR and that it has mostly grown in.

In relation to the issue area of Open Space, Ms. Adams noted that according to MPS OS1.3 a new development in an SNRA is required to provide open space equal to twice the developed area, or in this case, 100,010 square feet, which can be provided on-site, off-site or through a cash contribution equivalent. Ms. Adams noted that the design review meeting with the Town could reduce the impervious surface area thereby resulting in a smaller open space requirement, which is supported by the Town. The Applicant has requested relief from MPS OS1.3, but staff believes that the Applicant should still make some contribution towards protecting open space because of the presence of rare species and the WPA.

Ms. Adams then addressed the issue area of Hazardous Materials/Waste Management and stated that because the tenants are unknown at this point, the project may involve the generation, handling, or storage of Hazardous Materials or Wastes. MPS WM1.1 limits projects in WPAs to a household quantity, and Commission staff believes the project could be conditioned to limit the amount of Hazardous Materials and this has been acknowledged by the Applicant and so Commission staff does not believe consistency with this standard would be problematic. MPS WM1.4 requires the Applicant to provide a pollution prevention plan. Commission staff feels that the plan submitted as part of Stormwater Management could be augmented to satisfy this requirement. Lastly, MPS WM1.5 requires that the project comply with the State's hazardous waste regulations for Commission review. Ms. Adams noted that Commission staff suggests the project could be conditioned to provide the required documentation to satisfy this standard.

In relation to the Energy MPS, Ms. Adams stated that MPS E1.2 requires that the project be designed to earn Energy Star certification, although they do not actually have to be certified. She noted that the Applicant has submitted a Target Finder Energy Performance Results printout and has the intent to submit a Statement of Energy Design Intent. MPS E1.3, she said, deals with ASHRAE for windows and doors, which is a professional organization that certifies heating and cooling and energy efficiency. Ms. Adams stated that Commission staff believes that the Applicant's proposal to design the building with solar reflective roof and insulation is insufficient to meet this particular MPS and that some additional information will need to be provided on these elements to ensure they meet ASHRAE standards. Ms. Adams noted that under MPS E1.5 the Applicant must meet 6 criteria among a number of options and the Applicant has chosen to meet the Energy Star roof criteria, re-use of an existing structure, renewable energy features, energy-conserving landscaping, and to meet certain ANSI standards. The Applicant will need to select one more method to address MPS E1.5 and staff suggests using passive solar since the project already employs certain features such as a south facing building with low E-glazing on the windows and staff does not believe using a higher insulation R-value is adequate.

Ms. Adams summarized the areas in which the Applicant will need to provide more information, which include Waste Management under MPS WM1.4, Energy under MPS E1.3 and E1.5, and Land Use under MPS LU1.2.

Ms. Adams stated that the Applicant has requested a Hardship Exemption from Minimum Performance Standards WET1.2, WET1.4 and OS1.3 under Wetlands and Open Space, but is still required to comply to the maximum extent feasible with these standards. Any relief granted shall relate directly to the nature of the identified hardship and shall be the minimum necessary to address it. She also noted that the subcommittee must find that a literal enforcement of the provisions of the Act would involve a substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good or without nullifying or derogating from the intent and purpose of the Act.

Other criteria Ms. Adams reviewed with the subcommittee that would need to be met for approval was that the probable benefits of the proposed development are greater than the probable detriments (taking into consideration Best Development Practice LU1.3).

Ms. Adams noted comments from Yarmouth's Director of Planning in a 5/20/11 email that described the project's consistency with the bylaws and LCP. She noted Yarmouth does not have any DCPCs.

Ms. Adams concluded her presentation by noting that the hearing period and the record must close by June 22, 2011 and that a site design meeting with the Town might change the open space and wetland buffer impacts of the project.

Mr. Bornstein introduced himself and his team. He stated that what is being proposed is a 17,150-foot warehouse under a landing path, in an area which would be difficult to site for anything else. He stated that the land that the building currently sits on has been sold to the Town of Barnstable Fire Department and the building has to be removed. He noted that he had started this process over a year ago and if he had known the costs associated with the project then, he would not be here. He stated that the building is supposed to be off of the property by the end of July. He said that he is looking for a Hardship Exemption in the areas of Land Use, Conservation, and Energy. He made note of the adjacent buildings on the site which are a little less than 10,000 s.f. One is a mill building with a green roof, as specified by the Commission, and this building will have a white roof that will reflect heat off of the roof to conserve energy, and the front will be shingled. He stated that this is an industrial zoned piece of land under a flight path. He said that the benefit of this building is that there are many trucks going on and off Cape and there is a need for a warehouse, and it needs to be greater than 10,000 s.f. He stated that because the building has an extra 7,000 ft, the Commission wants $420,000 dedicated to open space, which he estimated would take 60 years to pay off. He said the rent for the warehouse is $6.50/ft, and the cost of relocating the building will be about $30,000 more to make it energy efficient. He stated that he was originally going to put solar paneling on the roof, but because the water heater will be so small, he does not feel that it will be worth the extra cost for the return they will get from it, so they are no longer proposing solar paneling. He said the building will be tightly sealed and does not have a lot of glass. The whole building is being recycled, he said, and the sprinkler system, air conditioning, electrical, and everything else except for the concrete, which will eventually be ground up and used someplace else. He said that around 15 year-round $12-14/hr jobs will be created as a result of this project, and about 25 people will be employed for about 6 months during the construction phase. It will also generate about $14,000 in taxes, he said, and will be a clean building. He said they will be very cognizant of what goes into the building, will retain the right to inspect the areas in the lease, and make sure the tenants know that they are not to have any hazardous wastes on the property. He referred to the design review by the Town and stated that he does not expect it to change the project much. The project has more parking than what is needed. He stated that there isn't any money in the building to pay for hardship exemptions. He said it will cost them around one million dollars in borrowed money and he has other buildings that are renting for the same price that are sitting empty. He said if he can't get relief across the board then it just doesn't work for him, and they'll send the land eventually and someone else will do something with it. He said that right now there is a need on the Cape and this project would reduce traffic and create taxes and employment.

Dan Ojala from Down Cape Engineering introduced himself to the subcommittee. He noted that Attachment 2 in the application materials was a letter from the Town in support of a total Hardship Exemption in the area of Open Space. He stated that the site is directly under a flight path and the annoyance that it will cause. He said that there will be a meeting on design review in a couple of days to try to reduce the impervious surface and if there is a method to put in pervious parking they will do that. He noted that they do feel that there is too much parking but

stated that it is the minimum that they can do based on the calculations. He acknowledged the buffer zone to the wetlands as being a critical aspect of the project, but stated that the building is sited appropriately and that it meets all of the zoning and parking requirements. Mr. Ojala stated that the wetlands are on the other side of the NSTAR easement and that NSTAR does plan to use the easement in the future, and read a portion of a letter that stated such out loud. He said that Willow Street is going to be a one-way street in each direction, so NSTAR will need the easement for access. He stated that based on the uniqueness of the situation, the subcommittee could grant relief in this particular instance.

Mr. Roy asked Mr. Ojala for a copy of the letter that he read.

Mr. Ojala stated that it is Exhibit A in the Hardship Exemption application materials. He stated that in regards to Hazardous Materials, he is in agreement with Ms. Adams' presentation on the topic. He pointed out that Yarmouth is very strict when it comes to Hazardous Materials and only allows household quantities and said that the project will comply with the Hazardous Waste Requirements. With respect to the Energy Standards, Mr. Ojala agreed with Mr. Bornstein's statements, that their isn't much glass and certain measures aren't worth the expense, but he said they can put in a 6 foot canopy to cover the windows on the south size to conserve energy. He said that they will work with the town to decrease the impervious surface but he hopes that everything else will be approved as it is.

Karen Greene, Yarmouth's Director of Community Development, was sworn in by the subcommittee Chair and provided an update on the upcoming meeting with Mr. Bornstein. She stated that the meeting would take place on Wednesday, June 08, 2011 at 3:00 PM and noted that the support from the Town was for no mitigation in the area of open space. She stated that they have not yet seen the elevations of the building but are hoping to get a better gauge on the project after the meeting and she will provide a written update and keep the Selectmen in the loop.

Mr. Brad Goodwin, member of the Yarmouth Planning Board, stated that he has been a member of the Board since 1994. The project is a warehouse in a warehouse zone, he said. He stated that it is off the main drag under a flight path and he was startled to find out that Mr. Bornstein had to go through this review process. He said that he and Mr. Bornstein do not get along and the fact that he came to support the project should have more weight than anyone else in the room.

Mr. Bornstein stated that this has been a long onerous process. He said the economy is in a downturn and he will only be getting about $6.50/ft for the building and it doesn't allow for him to pay all these other fees because it is just a warehouse. He said it will provide the Town with some tax money and it will provide some jobs. He reiterated that it is underneath a flight path, which is one of the reasons it is so well insulated, to keep the noise down. He requested that the subcommittee approve the Hardship Exemption.

Ms. Adams stated that she would be attending the design review meeting and that hopefully she would be able to bring something back for the subcommittee's consideration. She emphasized the fact that the project clearly meets the criteria for a DRI as established in the *Enabling Regulations*. She said that the Applicant has asked for relief specifically in the areas of Wetlands and Open Space only, and that with a little more information the project could be deemed consistent with regards to Hazardous Waste and Energy. She noted that the hearing and the record must close by June 22, 2011 and recommended continuing the hearing to a date and time soon after the meeting with the Town takes place.

Mr. McCormack asked if the Commission has any jurisdiction over the NSTAR right of way.

Ms. Heather McElroy, Natural Resources Specialist for the Commission, stated that the easement is handled locally.

Mr. Austin Knight asked what deadline the Applicant must meet.

Ms. Kyle stated that the building must be taken down by July 20, 2011.

Mr. Bornstein stated that it would take a month to take down the building and he will have to hire specialists to take down the building. He said the open space requirement is too high and even if they change the parking, it won't change the numbers that much, so he said that he needs feedback from the Commission because to even take down the building will cost about $50,000 in labor and he would like an indication tonight on the subcommittee's position regarding the mitigation.

Mr. Roy stated that the meeting with the Town is important and he understands that Mr. Bornstein wants some feedback but the subcommittee cannot do that until the meeting takes place.

Mr. Leonard Short asked Mr. Bornstein if this was a building he would be occupying or if it is an investment property.

Mr. Bornstein stated that he owns the building.

Mr. Short asked if he owned the land.

Mr. Bornstein said he owns the land and his business is to fix real estate on the Cape. He said it would be an investment property that would create jobs and taxes.

Mr. Short stated that he wanted to clarify whether it would be used for his business or whether it was an investment.

Mr. Bornstein stated that it was an investment.

Mr. Austin Knight continued the hearing to June 9, 2011 at 4:30 PM at the Assembly of Delegates Chamber. Mr. Robert Bradley seconded the motion and it came to a unanimous vote.

June 9, 2011 Continued Public Hearing
A continued public hearing was held beginning at 4:30 PM at the Assembly of Delegates Chamber, First District Courthouse, Barnstable, MA.

Ms. Andrea Adams, Senior Regulatory Planner for the Commission, provided an update on the project. Ms. Adams noted that she had received an updated pollution prevention plan earlier that day via email from Mr. Ojala, the Applicant's Engineer and provided comments to him, but it is still a draft. The subcommittee has also received signed copies of the design review comment sheet from a design review meeting that took place in the Town of Yarmouth, as mentioned at the previous hearing, she said. She noted that she attended the meeting and that one of the comments dealt with adding a turnaround and eliminating some of the parking

spaces and possibly some impervious coverage and trying to accommodate an abutter. She also noted that trellises are proposed on the northern side of the building, and additional doors and windows are proposed on the southern side which could have an effect on the energy budget. The Committee, she said, encouraged the applicant to reduce the parking lot and provide more green space, and recommended that local relief be sought to allow for less parking and suggests that the bylaw requires more parking than would be practically needed. Ms. Adams provided the subcommittee with a copy of a portion of the Yarmouth Zoning Bylaw and pointed to General Regulation Section 300, Parking and Loading, and directed the subcommittee's attention to Section 301.3.1 which allows for a reduction in parking by the Building Inspector upon unanimous recommendation in writing by the Site Plan Review Team, or by Special Permit from the Board of Appeals, if it is determined that special circumstances render a lesser minimum provision adequate for all parking needs. She said the site just meets the required parking amount required for its use, but this bylaw would allow Mr. Bornstein to seek a permanent reduction which would reduce the intrusion into the wetland buffer. She also pointed to 301.5, Table of Parking Demand, and Note 3, which allows parking to be constructed at a reduced number provided that the lot shall be capable of expansion to the required number of spaces, which she stated would allow for a reduction in parking by right with the excess to be held in reserve. Based on the discussion at the review meeting and her telephone discussion with Karen Greene, the results of this will be left up to the Building Inspector and qualifying for a Special Permit. She related the reduction in development to the impacts on the Open Space requirement and the proximity to the wetland buffer.

Ms. Ryan Christenberry, Planner for the Commission, provided an update on where the Applicant stands with regards to compliance with the Energy portion of the RPP. Ms. Christenberry stated that she still needs more information from the Applicant in order to determine whether they comply with the Energy requirements. She said that one of the requirements is to incorporate passive solar into the design of the building, but she has yet to receive information on the Low E specification for the windows, a façade of the south or west facing elevations to demonstrate placement of windows, etc. However, she stated that she does think the Applicant can meet the standards, and they have indicated an interest and willingness to do so, but she still needs more information. Ms. Christenberry noted that the Applicant stated at the last hearing that they no longer wish to include solar thermal, but on-site renewable energy is a requirement of the compliance path that they have chosen, so she would recommend that they consider solar PV, and noted that the green building path that they have chosen provides a lot of flexibility and it is up to them how they choose to comply.

Dan Ojala stated that the Design Review meeting was very helpful and that he gave the Committee some information about the look of the building to increase their comfort level about the structure itself, including a markup of the trellis and some plantings to break up the façade on the north since there will only be a 20 foot buffer between this building and the next. He said the area where he thinks they can improve the most is the buffer to the wetland and somewhat reduce the impervious area. He noted that Design Review was very receptive and felt that the parking was overdeveloped on the site and that all the buildings in the area only had a few cars and less parking could easily be accommodated for. He noted Footnote 3 and the Special Permit process within the bylaw and said that he and Mr. Bornstein would be willing to do whatever they could to increase that area between the wetland buffer, but noted that it is all local permitting and takes place after Commission review, and given their timetable he would appreciate flexibility in meeting that requirement. Mr. Ojala stated that warehouse use requires tractor trailer trucks and the need to access the loading dock in the back, so typically there is a turning port with a 45 degree radius to accommodate the trucks. He demonstrated to the

subcommittee, using a site plan, how he could potentially reduce the parking to reduce the pavement and swales and increase the buffer to the wetlands. Mr. Ojala suggested that in terms of energy compliance, it could be conditioned that where there is a window they can place an adequately sized canopy over it to provide solar shading in the summer and allow the sun to penetrate in the winter. He stated that there is not a lot of opportunity to add windows to the building since it is a warehouse and to do so would increase the risk of theft. He said that Design Review seemed relatively satisfied with the general layout and the proposed improvements would increase their satisfaction with the project.

Mr. Bornstein described for the subcommittee the lighting and heating situation in today's warehouses and the energy efficient rating that they would be using for the lights and the heating system. He stated that the warehouse will have a 2 ½ gallon water tank servicing the bathrooms. He said that he could put solar panels on the roof, but that he usually leaves it up to the tenant since they would get the tax credits for it. He said he doesn't see the warehouse using a lot of electricity and that solar only works when you get tax credits and write-offs and when that happens we're taking money out of everybody's pockets. He said that on Cape Cod you only get 11% sunlight in January, February and March and it wouldn't pay off for about 19 years, but he said that he would put it on if it's required or requested and that he worked that out with Ms. Christenberry. He said they would put more doors on the side and awnings, and whatever else will satisfy the Energy requirements, but he said the tightness of the building will save almost $2.00 in energy per year and there won't be any air conditioning.

Mr. Austin Knight stated that one of his concerns with the project is the sensitive area of water surrounding the building as it is wetlands and a water resource area for the Town of Yarmouth. He said that he wants to ensure that it is protected and noted that the Staff Report did state that the Commission rarely makes exceptions in areas such as this.

Ms. Adams directed the subcommittee's attention to two things in the record, the first being the March 17th Limited DRI Scoping Review Decision that was rendered on this project, and specifically the findings in the Water Resources section of that decision which was distributed to the subcommittee as part of the materials submitted for the record at the June 2nd public hearing. One of the findings, she said, states that the scoping checklist indicates that Water Resources should be included in the DRI review because the project is located in a Wellhead Protection Area and because the project proposes a septic system to treat wastewater which creates nitrogen loading. The second applicable finding, however, lists items within the materials submitted for the record which indicated that the project is not in a potential public water supply area and that the Town of Yarmouth regulations demonstrate an adequate level of protection from the possible use, handling and storage of hazardous materials, which is consistent with the RPP standards. She reviewed the standards for the subcommittee and ensured them that any hazardous wastes on the premises will not exceed the amount allowed by the RPP and the Town of Yarmouth.

Mr. Knight stated that as a Selectman for another Town, protection of the water supply and wetlands is a critical concern of his and he wants to see a condition in the decision that the water is protected and that hazardous waste will not exceed a household quantity, as stated.

Ms. Deidre Kyle was sworn in by the Chair and stated that in every lease there is a strict provision about hazardous waste, so if a tenant were to have any hazardous waste on the premises they would have a right to terminate the lease.

Mr. McCormack asked if what the Applicant is proposing in terms of the Energy standards would satisfy Ms. Christenberry's concerns.

Ms. Christenberry stated that it could but that she would like to see specific details so that the Commission is not conditioning the type of windows and their placement.

Ms. Adams suggested that the subcommittee might want to see a revised site plan which reflects the Applicant's efforts to incorporate the Design Review Committee's suggestions and reviewed some of those suggestions for the subcommittee.

Ms. Christenberry stated that there are three things that she would like to see. She said passive solar would require more glass on the south and southwest facing side of the building, which would allow for greater day lighting, reduce the need for electricity, and allow for passive solar heat gain in the winter. She would like a south facing elevation that shows the windows and specifies a Low-E type window and its rating. The other piece of it, she said, would be the Solar PV. She said the State incentives and rebates for this have incredibly improved, especially in the last year, and you can even sell the credits for them and the payoffs are between 4-6 years depending on the size of the system you install. She stated that it has been her understanding that the warehouse will have some sort of office component to it, and if so, there will be people occupying this space. She said that in regards to the awnings, they will offer some shade in the summer to prevent heat gain and they can be removable installations and do not have to be an architectural component.

Mr. Bornstein stated that he would agree to that.

Ms. Jessica Wielgus, Commission Counsel, stated that leaving the record open will allow the Applicant more time to submit this information for review.

Ms. Adams noted that the Applicant also needs to submit the draft revised hazardous materials pollution prevention plan to meet MPS WM1.4.

Mr. Ojala stated that the Commission could condition the project to put solar paneling on the roof as well.

Ms. Christenberry suggested that the decision could condition the project to be solar ready.

Mr. Short stated that his concerns relate to the permanent versus non-permanent condition of the parking area and asked the Applicant to state what he intends to do and why it would be an advantage or disadvantage.

Mr. Ojala stated that the parking calculations in the Town of Yarmouth are fairly complex and required the building to have a minimum of 23 spaces. He said that there are a few mechanisms they could use to try and reduce that number of spaces, and they could get an indication from the building commissioner about whether or not they can do that but nothing would be definite until they have completed the Commission process. He said they would try to reduce the number of spaces in the area adjacent to the wetland buffer, move the dumpster and permanently adjust the pavement and remove about 4 parking spaces. He noted that doing so would move the project out of the 100 foot buffer to the wetland and reduce the impervious area. Mr. Ojala drew a dotted line on the site plan to demonstrate which area would not be built

on and stated that the Commission could condition the decision accordingly and state that all options must be exhausted in furtherance of a reduction in parking.

Ms. Adams again drew the subcommittee's attention to the applicable sections of the Zoning Bylaws and noted that the Applicant has letters of support from the Town Boards to be taken into consideration by the Board and Building Inspector, although the decision is not guaranteed.

Mr. Short asked whether there would be office space in the building.

Ms. Adams replied that according to the application, the building would be 93% warehouse with the remainder of the building being used for auxiliary or other purposes.

Mr. Ojala stated that there would be about 600 s.f. of office space and about 500 s.f. of retail in case any reseller has one or two items which they would like to sell. He said that even if everyone drove their cars, it would still only require about 16 spaces.

Mr. McCormack asked if there have been any further discussions about mitigation.

Ms. Heather McElroy replied that there have not, but that with this proposed change in the site plan, it would reduce the total disturbed area on the site which would reduce the open space requirement or the amount the Applicant is requesting relief for.

Mr. Bornstein discussed the costs involved with the project and stated that it will not be a money maker and stated that there is no room for mediation.

Mr. Short asked Mr. Bornstein why he is trying to be such a nice guy.

Mr. Bornstein stated that he began with the idea of recycling a building and did not realize the costs that would be involved. He said he employs a lot of people and did not want to lay anybody off and he said hopefully eventually he will make some money off of the project but right now it just doesn't make sense. He said people can rent for $4-$5/foot right now but they are looking for a larger sized building off of an exit.

Mr. Ojala said that Mr. Bornstein has a lot of employees on the Cape and he sees an opportunity where he owns a building in Hyannis, which he can move or put in a shredder, but by moving it he can keep the economy going, keep people employed and eventually get a return. There may not be a lot of profit in it right now, he said, but it still makes sense on some levels.

Ms. Adams stated that the Applicant did have full knowledge of what the requirements would be as far back as August, 2010, and when he first applied with the Conservation Commission Notice of Intent there is information in the record that Commission Staff informed him that Open Space would be an issue on the project and that there would be potential for mitigation as there was a requirement that Open Space be the equivalent of twice the developed area. He was also informed that the project would be a DRI once it exceeds the 10,000 ft threshold, she said.

Mr. Bornstein stated that he was made aware of all of that but he thought he would be in front of a reasonable group of people and that he would get a waiver for the extra 7,000 s.f. of an industrial zoned building on a useless piece of land because of where it is. He said that he hoped the people on the Board would realize that the numbers don't work and appreciate his

circumstances and that he is generating money for the Town and will grant him a complete waiver.

Mr. Roy stated that the subcommittee has heard from the Town of Yarmouth and various boards about how important the project is to them, but the standards of the Commission are also important. He said the subcommittee will need to weigh all of the information that has been put in front of them and some more information still needs to be submitted.

Ms. Adams suggested the subcommittee continue the hearing so that the information can be provided to them in a public forum so that the public can comment on that information.

Mr. McCormack asked Mr. Ojala what regulations might come into play in terms of the NSTAR easement and wetlands.

Mr. Ojala stated that it would either be a Determination of Applicability or some type of Conservation Commission, and Site Plan Review may or may not have jurisdiction. Site Plan Review is triggered by over 1,000 s.f. of impervious area so they would probably take a look at it, he said, and they may have already done so a few years back when the easement was granted.

Mr. McCormack asked if Site Plan Review and the Conservation Commission require mitigation.

Mr. Ojala replied that typically they do not at the local level, and said that they require a 35 ft undisturbed buffer and a low impact stormwater design but all of that would be reviewed at the local level.

Mr. McCormack asked if there is an Economic Development Center in the Town.

Ms. McElroy replied that it is mapped as an Economic Center.

Ms. Adams stated that it is B3 under Zoning and an Economic Center under the Land Use Vision Map.

Mr. McCormack asked if there were any provisions under Chapter H that would allow the threshold to be greater than 10,000 s.f.

Ms. Adams stated that it could be done, but it would not apply to Mr. Bornstein's project because it would need to go before the Assembly of Delegates and it could not be done before the project was decided on.

Mr. Bornstein stated that he is hoping to have a decision on the Hardship Exemption today because he has until July 19th to remove the building from the premises.

Ms. Wielgus stated that the subcommittee needs to look at a few standards for the purpose of the Hardship. There is the issue of the Open Space mitigation and whether the subcommittee wants it paid in full or reduced completely or in part, she said. Ms. Wielgus noted that WET1.2 and 1.4 also need to be considered, along with the testimony received tonight regarding the reduction at the local level and whether or not it can be accomplished. She said that the relief granted should be the minimum necessary and the subcommittee should consider the reduction of the buffer to the extent described and whether it is sufficient and if they want to grant that hardship based on the reduction. For Energy, Mr. Ojala indicated that they intend to submit a

plan that would comply with the elements that Ms. Christenberry is seeking, she said, and based on all the information presented tonight, she does not think it is necessary to have another hearing to get the plan in the record. The discussion about Energy, she said, can be contingent upon receiving that plan and having Ms. Christenberry review it. She said the subcommittee could discuss the other components of the project and come back to Energy at another time. Ms. Wielgus asked Ms. Adams if there is any other information that is still needed.

Ms. Adams stated that the only other information that is needed is the Waste Management Plan. She noted that in order for a draft decision to go in front of the full Commission on July 7th that hearing will have to be noticed next week.

Ms. Wielgus suggested the subcommittee proceed through each issue area beginning with WET1.2 relating to the Wetland boundary.

Ms. McElroy stated that the modifications that are being proposed would significantly improve protection of the wetland buffer, but are still not strictly consistent with the standards and therefore a hardship would still need to be granted for approval of the DRI, which could be done, contingent upon a plan like the red line version Mr. Ojala presented.

Mr. Ojala stated that he could make it into a pdf and have it ready in a day or two.

Ms. Wielgus reviewed the standards with the subcommittee and said that the subcommittee should look at the proposed movement of the parking and the positioning of the easement and make a decision.

Mr. Knight stated that the movement of the parking is also contingent upon the Town and asked whether this changes the dynamics of the conversation.

Ms. Wielgus stated that if the subcommittee were inclined to grant hardship relief, it would be to the extent necessary so it would need to acknowledge the application at the local level for the reduction in parking and grant it to the extent allowed, and also consider the alternative and if the application were denied, the hardship would have to be granted for the original amount.

Mr. Ojala asked if a denial of the application for the reduction in parking could be tied to a donation of $10,000.00 to open space.

Ms. Adams stated that if he were proposing it as mitigation it would be provided to the Barnstable County Treasurer and be provided to the Town of Yarmouth for Open Space purposes. She said it would ultimately go to a Conservation entity but that would not need to be specified at this point.

Ms. Wielgus suggested that another alternative would be to grant hardship relief to the extent of the proposed moving of the boundary, and to the extent that it is not, the subcommittee could require a modification to the decision if the parking is not reduced.

Ms. Adams agreed because she said this deals with physical disturbance and it is better not to have that disturbance in the wetland buffer than to contribute to conservation. However, she said that the donation would be something that could be considered for the Open Space requirement. For Wetlands 1.2 and 1.4, she noted it is covered in the Staff Report, and the relief granted could be based on the revised plan which includes the reduction.

Mr. Knight stated that he feels the Town has come forward on this in terms of a hardship based on the letters the Commission has received from different boards and the Applicant has demonstrated that hardship as well.

Mr. Roy agreed that this seems to be an important project for the Town, and the developer has demonstrated a willingness to reduce the amount of space being used to make this happen, and he feels there is a hardship.

Mr. Robert Bradley also agreed but asked if this can be approved without it being a permanent reduction.

Ms. Wielgus stated that the Applicant will not be able to apply for the reduction until the Commission process is completed, but the subcommittee can condition the relief upon the Applicant applying for a reduction in parking.

Mr. Short stated that he feels this is a poor business decision but he will support the hardship exemption.

Mr. Knight moved that the Applicant has proved that a hardship exists related to MPS WET1.2 and WET1.4. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. McCormack moved that a literal enforcement of the provisions of the Act in relation to MPS WET1.2 and WET1.4 would involve substantial hardship, financial and otherwise, and that desirable relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. Short moved that there be a finding in the decision that the Applicant has testified that he will seek a reduction in the parking and that is the basis for the relief granted and is the minimum necessary to address the hardship. Mr. McCormack seconded the motion

Mr. Roy asked Mr. Ojala about the lines which were drawn on the plan indicating the reduction in parking.

Mr. Ojala stated that the firm red line is the pavement and that it shows the removal of 5 parking spaces which he will seek to have as a permanent reduction. He said that he would leave the plan to be submitted in the record and photograph it so that he can make the necessary adjustments on the computer.

Mr. Short's motion passed unanimously.

Ms. Wielgus stated that the next issue the subcommittee will need to discuss is Open Space, MPS OS1.3. She noted that the project is required to provide permanently protected open space in amount that is the equivalent of twice the total developed area, or based on the old plan, 100,010 s.f., or if it is reduced then that amount would also be proportionately reduced. The mitigation amount required for the original plan, she noted, is $420,152.00. She said that the subcommittee will need to determine whether there is a hardship in providing that mitigation, financial or otherwise, and whether they want to reduce the mitigation in whole or in part.

Ms. Adams suggested that, as was stated in the Staff Report, the Applicant should make some sort of contribution towards Open Space because it is located in a Significant Natural Resources Area, even though there is no take, and it is a Wellhead Protection Area as well. She noted that Mr. Ojala has suggested $10,000 towards wetlands protection, and perhaps this could be applied towards open space.

Mr. Ojala stated that he suggested the money as a sort of insurance policy in the event that the amount of parking cannot be reduced.

Ms. Wielgus noted that the subcommittee will have to determine whether a hardship exists in this particular case, and if so, the degree of hardship that is warranted. She said that the amount of mitigation they should provide is up to the subcommittee.

Mr. Knight said the difficulty comes from all of the information being provided, the testimony of the applicant, the standards of the Commission, the size of the project, the amount of space it takes up, the costs involved, and the sensitive area where it is located are all issues that need to be taken into consideration. He stated that he would like some sort of contribution, whatever the number may be, between zero and four hundred and twenty thousand that is fair to the Applicant.

Mr. Bornstein stated that he has been developing land for around 30 years and he has given away a lot of land to conservation, although there was not a Commission at that time, and he does not have any more land to give to conservation. He said the Town is supporting the project and he won't be making a lot of money from it but it is hard to walk away at this point and if the Commission is looking for a $10,000 donation to conservation then that's what it will take.

Mr. Knight stated that he is trying to come up with a number that would be fair for the Applicant or some indication of what the Applicant thinks is fair, some number to work with that shows good faith in the process. Mr. Knight said, understanding the economy and the situation, he would not be opposed to a $10,000 contribution to Barnstable County.

Ms. McElroy clarified that the contribution would be held by the Commission through the Barnstable County Treasurer, but only for the purpose of open space acquisition in the Town of Yarmouth.

Mr. Bradley asked if there are any other situations the subcommittee could use for comparison in terms of granting hardship relief in this area.

Ms. McElroy explained the mechanism that the Commission has used in the past for calculating a cash contribution and the mechanism that is now used and said that past projects have typically met their open space requirement on-site because that is the most cost-effective way to do it. Where the requirement was provided off-site, she said, typically the Applicant will locate a property, buy it, and have it deeded to the Town. Ms. McElroy noted that when Mr. Bornstein first came to the Commission with this project, he was told that there was a problem with the design and that Open Space would be a requirement of the project, and that the Commission recommended that he reduce the size of the building. But, she said, he has stated that he is unwilling to do that and that the project will not happen if the size of the building is reduced. Ms. McElroy stated that it is up to the subcommittee whether they want to reduce the amount of mitigation and by how much.

Mr. Bradley suggested that they should not just pick a number out of the air because the Town has a relationship to this project and there are other people with mitigation factors and there has to be fairness to the process and just because Mr. Bornstein says that $10,000 is the right number doesn't necessarily mean that it is. He said that he feels there should be more deliberation on this.

Ms. McElroy stated that when the three boards came together to meet on Mr. Bornstein's request for hardship relief, the Open Space Committee put forth the idea of having him mitigate that portion of the project that is beyond the size that would have brought his project to the Commission to begin with, or in his case 7,000 s.f.

Ms. Adams noted that this information is in the letter from the Boards that was submitted for the record.

Mr. Bornstein said that he is asking for a complete waiver of all mediation and that is why he is here. He said the land is on a flight path and the money isn't there and that is why he needs a waiver. He said that every project stands on its own feet and that he has paid hundreds of thousands of dollars in mediation in other towns and the projects are sitting empty and he can't get his money out of them. He said he is asking for a complete waiver and volunteered to pay $10,000 in good faith.

Ms. Kyle said that she has a copy of the memo from the Town of Yarmouth dated April 13, 2011 and they voted to support Mr. Bornstein's hardship exemption and their request for reduced or no mitigation for the project.

Ms. Adams noted that there is another part of that letter that Ms. Kyle did not read in which they suggest that the mitigation be based upon the increment above 10,000 s.f. as a starting point.

Ms. Kyle read that portion of the letter aloud.

Mr. Ojala stated that he was also involved in the IFAW project and that IFAW was granted a waiver for Open Space.

Ms. Adams noted that IFAW was a project of community benefit.

Mr. Bornstein said his project is providing tax money and employment.

Ms. Adams stated that IFAW is also a non-profit organization.

Ms. Wielgus noted that at the last meeting Karen Green testified on behalf of the Town that the Town supports no mitigation in the area of Open Space, which is recorded in the minutes.

Mr. McCormack stated that as Ms. McElroy pointed out, the money that is provided goes back to the Town, so perhaps the Town is saying that they don't need the money.

Mr. Roy said that he agrees with Mr. Knight's previous statement, that there should be some contribution to open space, even if the Town supports no mitigation, and he agrees with the $10,000 figure.

Mr. Short said that he'd like to get as much as he can for mitigation. He said he thinks the $420,000 is unreasonable, but that $10,000 is pretty cheap, but if the number is too high, Mr. Bornstein would pull the project and leave a piece of land.

Mr. Roy stated that the land is very hard to market anyway.

Mr. Bradley said that he does not feel obligated to approve something just because Mr. Bornstein will pull the project, because that is not fair to everybody else that comes before the Commission.

Mr. Knight said that his decision is not based on Mr. Bornstein pulling the project, it is based on the testimony received and the support from the Town and his estimation that $10,000 would be a fair amount to provide to open space for this project.

Mr. Bradley stated that he has also heard the testimony, but his concern is that a precedent will be set for other developers and other properties moving forward. He said he is not prepared to base a decision on a number picked out of the air, and he would like to see some clear cut formula to base the number on. He said he is concerned that the project might not be built, but at the same time if a number like $20,000 would stop a project, then it is an extremely marginal project, and he has a difficult time believing that it would.

Mr. Knight said that there are letters from the Town supporting zero mitigation.

Mr. Bradley refuted that the letters did not say that.

Mr. Knight said that Karen Greene testified that the Town supports zero mitigation, so he feels that there should be a nominal contribution, and the number came up during the conversation relating to reduction in parking, and that number shows the spirit of the Town's desire for zero mitigation and that number shows a good faith effort.

Mr. Knight moved that there is a hardship in the area of Open Space mitigation. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. Knight moved that based on the testimony from the Town supporting zero mitigation, that the mitigation for Open Space be reduced from approximately $420,000 to $10,000, and that it relates directly to the identified hardship, and is the minimum amount necessary to address the hardship, and that the relief granted does not result in substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Act. Mr. Bradley seconded the motion.

Mr. Knight stated that the Town has supported the Applicant's request for hardship relief and he emphasized the Town's desire for zero mitigation and his belief that $10,000 is a fair amount.

Mr. Bradley stated that he does not believe the Town's desire for zero mitigation should take precedent over other considerations, especially when the Town also supported a reduced amount, and he doesn't understand where the amount came from. He said that he feels it is detrimental to the purpose of the Commission.

Mr. McCormack said that he believes the letter from the Town said that they support zero, but if the Commission does not agree with that amount, then they would support a reduction.

Ms. Adams said that the letter that Ms. Kyle read stated that they would support zero mitigation for Open Space, or suggested that they base the mitigation on the increment above 10,000 s.f., and she noted that the letter is only one factor and that the subcommittee can choose any number between zero and $420,000.

Four members of the subcommittee voted in favor of Mr. Knight's motion and Mr. Bradley voted in opposition.

Ms. Wielgus said that the next issue the subcommittee will need to discuss is Land Use and MPS LU1.1 dealing with the Land Use Vision Map. She noted that in order for the subcommittee to determine that the project meets the standards in this area, you would need to find that the project has characteristics of redevelopment and that it does not present a threat to the resources and characteristics intended to be contained by the Land Use category based on the testimony and evidence in the record.

Mr. Knight moved that the project meets MPS LU1.1. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. McCormack moved that the project could be conditioned to comply with the applicable Minimum Performance Standards in Hazardous Materials, WM1.1, WM1.4, and WM1.5. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. Knight moved that the project could be conditioned to comply with MPS ED1.5 based on the testimony received. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. Short moved to support a Hardship Exemption in the areas of Wetlands and Open Space for the project and recommend it to the full Commission. Mr. McCormack seconded the motion and it came to a unanimous vote.

Mr. Short directed staff to draft a written decision for review and approval. Mr. McCormack seconded the motion and it came to a unanimous vote.

Mr. McCormack moved to procedurally continue the hearing to June 22, 2011 at 10:00 AM. Mr. Knight seconded the motion and it passed unanimously.

<u>June 23, 2011 Subcommittee Meeting (subject to approval by subcommittee)</u>
A Subcommittee meeting was held beginning at 4:30 PM at the Cape Cod Commission office, Barnstable, MA.

Mr. Leonard Short moved to accept the minutes of the June 2, 2011 public hearing. Mr. Jack McCormick seconded the motion and it came to a unanimous vote.

Mr. Roy invited Andrea Adams, Senior Regulatory Planner for the Commission, to review the draft decision with the subcommittee.

Ms. Adams noted the materials that have been provided to the subcommittee since the last hearing on June 9, 2011 and asked Ms. Ryan Christenberry to review the Energy portion of the decision with the subcommittee which reflects the additional material that had been received before the closing of the record.

Ms. Christenberry began by referencing the three pieces of information she had requested from the Applicant at the last hearing, which included elevation plans specifying the number of windows and the Low E aspect, and the location of the rooftop solar PV array. She reviewed 10 Energy Findings and 3 Conditions with the subcommittee, noting a minor spelling correction to Condition EC3.

Ms. Adams noted that each finding has a condition related to it to ensure that it complies with the corresponding Minimum Performance Standard (MPS).

Mr. Short asked whether reference to the awnings was included in the decision.

Ms. Adams stated that the elevation drawings that are referenced in the decision include awnings.

Ms. Christenberry stated that they depict the 36 inch window awnings and door awning and reference that the Applicant adheres to the window layout plan referenced in the building elevation plans to ensure they are a component of the final design. She suggested adding the words "9 south facing windows and awnings" to item 4 under condition EC3.

Mr. Dan Ojala noted that Mr. Bornstein had asked him to show an alternative plan for a 36 inch roof overhang for those upper windows, but the awnings will go on the doors no matter what. He said it may make more sense economically to extend the roof over the upper windows and that it is referenced on the plans.

Ms. Christenberry stated that either option would serve the purpose of providing shading in the summer, and that the language could be further amended to read "and awnings or overhangs."

Mr. Austin Knight stated that the roof would be more permanent than the awnings and asked which option the Applicant would prefer.

Mr. Bornstein stated that he would prefer to have an option because there is more maintenance involved with the awnings, but they haven't had the time to assess the costs and safety issues involved with either option.

Ms. Adams continued to review the draft decision page by page with the subcommittee, noting the updates that will be made to the date of the decision, the minutes, and the materials sections of the decision. After reviewing the General Findings of the decision, Ms. Adams noted that a copy of the decision was also sent to Karen Greene, Yarmouth's Director of Planning and community Development, as well as the Applicant and that she has not received any comments from them on the draft decision to date.

Ms. Adams began to review the Open Space findings and Mr. Knight asked that the subcommittee's reasoning for the reduction in open space mitigation be included in Finding OSF2.

Mr. Knight moved to include a reference to the letter from the Town in support of a reduction in the Open Space mitigation into Finding OSF2 of the draft decision. Mr. McCormack seconded the motion. The subcommittee discussed the implications of including that reasoning in the finding, and the motion passed with Mr. Bradley voting in opposition.

Ms. Adams continued to review the draft decision page by page with the subcommittee. Mr. Ojala filled in the approximate maximum intrusion into the wetland buffer under WETF3 (14 feet) and asked about the language in the Wetlands conditions where it stated "including but not limited to areas to be disturbed, the building envelope, and paved/parking areas," and whether this meant that the Applicant will be required to reduce the size of the building.

Ms. Adams stated that the Building Inspector has the authority to further reduce the size of the development and she drafted the language that way to reserve that authority.

The subcommittee determined that since the Town and the Building Inspector already have the authority to reduce the size of the project, the additional language is not necessary and should be stricken from all four Wetlands Conditions of the draft decision.

Ms. Adams finished reviewing the draft decision with the subcommittee and noted that if they find the decision to be satisfactory they can vote to recommend approval by the full Commission at the July 7, 2011 meeting.

Mr. Knight moved to recommend approval of the project as a Limited DRI/Hardship Exemption to the full Commission. Mr. Short seconded the motion and it came to a unanimous vote.

Mr. McCormack moved to approve the draft decision as amended. Mr. Knight seconded the motion and it came to a unanimous vote.

The subcommittee reviewed the draft minutes of June 9, 2011. Mr. Short moved to approve the draft minutes. Mr. McCormack seconded the motion and it came to a unanimous vote.

JURISDICTION

The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(i) of the Commission's *Enabling Regulations* (Revised March 2011) as new construction of a commercial building with a Gross Floor Area greater than 10,000 square feet.

FINDINGS

The Commission has considered the DRI/HDEX application for the proposed 17,150 square foot (s.f.) warehouse, and based on the Limited DRI Review Scoping decision dated March 17, 2011 and the information presented at the public hearings and submitted for the record to date, makes the following findings, pursuant to Sections 12, 13, 13(a), and 23 of the Act and Sections 3, 5, 7 and 9 of the *Enabling Regulations*:

General Findings

GF1. As the date of the first substantive public hearing on the proposed project as a Limited DRI/HDEX was June 2, 2011, the project was reviewed subject to the 2009 RPP, as amended in March 2011, which is the RPP in effect at the time of the first substantive public hearing on the project.

GF2. The proposed project that is the subject of this decision is a proposal to move 17,150 square feet of a 23,000 square foot metal framed building currently located at 77 High School Road Extension, Hyannis to a vacant site located at 31 Aaron's Way, West Yarmouth. The lot on which it sits was sold to the Hyannis Fire Department, and the existing 23,000 square foot

building must be moved or demolished, to allow the Fire Department to expand. The subject property at 31 Aaron's Way in West Yarmouth is comprised of one lot, encompassing approximately 1.15 acres or 50,000 square feet, zoned *B3*. The Limited DRI application states that the proposed use will be predominately warehouse (93%), with a support office and a showroom to fill the remainder of the space.

GF3. The proposed project is subject to a March 17, 2011 Limited DRI Review Scoping decision and from that decision is subject to issuance of a Certificate of Compliance by the Commission either prior to issuance of a Building Permit or prior to issuance of a Certificate of Use/Occupancy to ensure that the development will be built in accordance with the plans and information presented to the Commission Subcommittee to make the Limited DRI Review Scoping determination.

GF4. As of the date of this decision, the Town of Yarmouth did not have a Commission-certified Local Comprehensive Plan (LCP). The project, as proposed, is nevertheless consistent with Yarmouth's LCP as confirmed by written testimony received on 5/20/11 from Karen Greene, Yarmouth's Director of Planning and Community Development, which states *"[t]he proposed development is consistent with the goals outlined in the Town's Local Comprehensive Plan, Economic Development Chapter in that the project helps to create and diversify year-round employment opportunities. The project is located within an area identified as an Economic Center on the Commission's Land Use Vision Map, and as such should be considered as an area where the Town has targeted economic growth."*

GF5. As provided in written testimony dated 5/20/11 from Karen Greene, Yarmouth's Director of Planning and Community Development with regard to local zoning, *"[t]he proposed warehouse use is located within the Town's B3 zone and as such is permitted by right. Because the site is located within the Aquifer Protection District, all uses will be required to be compliant with the provisions of zoning bylaw Section 406 (Aquifer Protection Overlay District).* [sic] *In conjunction with their support for the applicant's hardship exemption, the applicant has agreed to comply with the Towns Architectural and Site Design Standards with additional comments provided through the memo dated April 13, 2011 from the Planning Board and Community and Economic Development Committee to the Board of Selectmen that articulate the possibility of reducing the amount of impervious coverage as part of the strategy to reduce the amount of required mitigation."*

GF6. As the project is not located in a District of Critical Planning Concern, the Commission finds that the project is consistent with this criterion.

GF7. The Commission finds that the probable benefits of the project outweigh the probable detriments of the proposed project. The project's probable benefits include that the project has or will meet BDP LU1.3 (*Redevelopment/Reuse*) through the re-use of 17,150 square feet of a 23,000 square foot existing building; the use of a parcel of land under the flight path of Barnstable Municipal Airport and the creation of approximately 15 year-round jobs versus the probable detriment of the intrusion into the 100-foot wetland buffer.

GF8. The Applicant received letters in support of the HDEX request in the areas of Open Space and Wetlands, including an April 13, 2011 joint memorandum from the Chairmen of Yarmouth's Planning Board, Community and Economic Development Committee (CEDC) to the Yarmouth Board of Selectmen in support of the Applicant's HDEX request, and a May 4, 2011 Memorandum from Peter Johnson-Staub, Acting Town Administrator, which memorializes the

Board of Selectmen's vote in support of granting relief from the project's open space requirements.

GF9. The Commission has considered the written testimony of the informal Design Review Committee dated 6/8/11 based on the Design Review Comment Sheet submitted as part of the record at the 6/9/11 public hearing. Based on this testimony, the Commission finds the Design Review Committee *"encouraged the applicant to reduce parking lot size and to provide additional green-space buffer to the site."* The Commission also finds that the Design Review Committee *"recommends that local relief be sought to allow less parking that required by zoning, particularly in light of the Aquifer Protection District.... as well as likelihood that the zoning bylaw requires more parking than will be practically needed. Recommendation is that south side parking be moved closer to building, a 'turning T' be utilized, additional buffer be provided, and to reduce the amount of open space disturbance."*

GF10. The Commission finds that Section 300 of Yarmouth's Bylaw includes at least two mechanisms for the Applicant to request that the Town reduce the development envelope, including areas to be paved and parking areas as shown in the revised *Layout and Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing.

GF11. The Commission finds that the proposed project qualifies for a Hardship Exemption pursuant to Section 23 of the Act and Section 9 of the *Enabling Regulations* in the Regional Policy Plan issue area of Open Space and the application of MPS OS1.3. The Commission finds a financial hardship exists, and finds that a literal enforcement of the provisions of the Act and MPS OS1.3 would involve substantial financial hardship and that desirable relief from MPS OS1.3 may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, by reducing the amount of open space mitigation provided.

GF12. The Commission finds that based on the revised *Layout & Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing and based on the revised *Landscape & Layout Plan of Land* received by Email on 6/17/11 (latest revision 6/17/11) that the proposed project complies to the maximum extent feasible with MPS OS1.3 and that any relief granted from MPS OS1.3 relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

GF13. The Commission finds that the proposed project qualifies for a Hardship Exemption pursuant to Section 23 of the Act and Section 9 of the *Enabling Regulations* from the application of MPS WET1.2 and MPS WET1.4. The Commission finds a hardship exists, and finds that a literal enforcement of the provisions of the Act and MPS WET1.2 and MPS WET1.4 would involve a hardship based on the project's need to provide an adequate turning radius for large tractor trailer trucks. The Commission also finds that desirable relief from MPS WET1.2 and MPS WET 1.4 may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, by allowing the minimum necessary intrusion into the 100-foot wetland buffer.

GF14. The Commission also finds that based on the revised *Layout and Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing and based on the revised *Landscape & Layout Plan of Land* received by Email on 6/17/11 (latest revision 6/17/11) that the proposed project complies to the maximum extent feasible with MPS WET 1.2 and MPS WET 1.4, and that the extent of disturbance/intrusion into the wetland buffer has been reduced.

The Commission also finds that the Applicant is committed to seeking a further reduction in site development through mechanisms in Yarmouth's Zoning Bylaw, Section 300, but that the further reduction of development in the wetland buffer per Yarmouth's Zoning Bylaw is not possible at this time due to the local review being suspended until Cape Cod Commission review is completed. The Commission also finds that the relief granted from MPS WET1.2 and MPS WET 1.4 relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

Land Use Findings

LUF1. MPS LU1.1 (*Development Location*) requires that development and redevelopment shall be consistent with the category of desired land use where the project is located and its characteristics. According to the Regional Land Use Vision Map, the area in West Yarmouth where the proposed new development is to be located is mapped as an Economic Center. The RPP defines an Economic Center as *"[a]reas...appropriate for growth and redevelopment. These areas serve the region or sub-region and could include characteristics such as civic and institutional uses, retail, and mixed use."*

MPS LU1.1 also states in part that:

"Notwithstanding this requirement, the Commission may find that development and redevelopment has met this requirement, if, in its discretion, it finds each of the following:

1) *The proposed project is a redevelopment, or the expansion of a previously approved DRI; and,*

2) *The Commission finds that the proposed development does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category."*

LUF2. The Commission finds that the proposed project has some of the characteristics of redevelopment, as the Applicant proposes to relocate and reuse 17,150 square feet of an existing 23,000 square foot building currently located in Hyannis.

LUF3. The Commission adopts the written testimony of an April 13, 2011 joint memorandum from the Chairmen of Yarmouth's Planning Board and Community and Economic Development Committee (CEDC) to the Yarmouth Board of Selectmen and the May 4, 2011 Memorandum from Peter Johnson-Staub, Acting Town Administrator and the 5/20/11 testimony of Karen Greene, Yarmouth's Director of Planning and Community Development and finds that the proposed project is consistent with the intent of MPS LU1.1 and that *"the proposed development does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category."*

LUF4. MPS LU1.2 (*Compact Development*) requires in relevant part that *"[n]onresidential development and redevelopment shall be clustered on the site and with adjacent uses to the maximum extent possible by incorporating features, as applicable, such as multistory buildings, mixed use development, minimal setbacks from the street, limited and/or shared parking, and a pedestrian-friendly design that encourages walking, biking, and transit."*

The Commission finds that Willow Street is a regional road, and as such, maintenance of a vegetated buffer to Willow Street is more important than requiring a smaller setback for the

proposed project. The Commission also finds that maintenance of a buffer to Willow Street is also a requirement through conditions of the Commission's November 30, 2006 DRI/HDEX review of the contractor's and kitchen and bath showroom buildings (Supply New England-Yarmouth).

LUF5. The Commission finds that because the project is a proposed warehouse that Best Development Practices BDP LU1.4 (*Reuse of Historic Buildings*), and BDP LU1.5 (*Location of Municipal Offices*) as well as RPP Sections LU2 *(Capital Facilities and Infrastructure),* and LU3 (*Rural Lands*) do not apply to this project.

Open Space Findings

OSF1. MPS OS1.3 requires an amount of open space in an amount equivalent to twice the total developed area, or approximately 100,010 square feet, to be met offsite, or alternatively through the provision of a cash contribution toward the acquisition of open space in the Town of Yarmouth. The approximate value of the cash contribution, based on current assessed values of undeveloped residentially zoned properties in Yarmouth (Commission Technical Bulletin 94-001) would be $420,152.

OSF2. The Commission finds that the proposed project qualifies for a Hardship Exemption pursuant to Section 23 of the Act and Section 9 of the *Enabling Regulations* in the application of MPS OS1.3. The Commission finds a financial hardship exists, and finds that a literal enforcement of the provisions of the Act and MPS OS1.3 to the project would involve substantial financial hardship and finds that desirable relief from MPS OS1.3 may be granted by reducing the required open space mitigation from $420,152 to $10,000. The Commission finds that this reduction in based in part on the written testimony from the Town representatives including the April 13, 2011 Memorandum from the Yarmouth Planning Board and Community Economic Development Committee to the Board of Selectmen, and the May 4, 2011 Memo from the Acting Town Administrator to support a reduction in the open space requirement, including the potential to eliminate open space mitigation entirely. The Commission also finds that the relief granted on open space mitigation relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship and this relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

OSF3. The Commission makes these findings in part based on the materials and testimony in the record, including the statement in the HDEX application that the *"payment of any mitigation would be a severe hardship to Applicant,"* and the written testimony from the Town representatives including the April 13, 2011 Memorandum from the Yarmouth Planning Board and Community Economic Development Committee to the Board of Selectmen, and the May 4, 2011 Memo from the Acting Town Administrator to support a reduction in the open space requirement, including the potential to eliminate open space mitigation entirely, to ensure the viability of the project.

OSF4. The Commission finds that because the project is located in a public Wellhead Protection Area, it is appropriate to require that the Applicant shall make a contribution toward protecting open space in Yarmouth by providing a $10,000 cash contribution, to be held by the Cape Cod Commission/Barnstable County Treasurer and to be used to fund open space protection in Yarmouth.

Wetlands Findings

WETF1. The project site is located within a Significant Natural Resource Area (SNRA) due to the presence of a public water supply Wellhead Protection Area and state listed rare species habitat. The site is currently vegetated, comprised of a mix of oaks and pitch pines with a low shrub understory, on a lot a little over an acre in size. A wetland is located offsite, though within 100 feet of the project site boundary. Adjacent properties to the north, west, and south are presently developed with office, showroom and the NSTAR utility offices.

WETF2. Given the disturbed nature of the properties surrounding the site, the small size of the site, and the fact that the Natural Heritage and Endangered Species Program has indicated that the project *"will not result in a prohibited "take" of state listed species,"* the Commission did not require preparation of a Natural Resources Inventory per MPS WPH1.1 for the project site. The site is effectively fragmented from remaining habitat in the area, with the exception of the easterly property boundary, which abuts an NSTAR easement and land containing a wetland.

WETF3. Project-related development, including parking or driveway areas, and stormwater management structures, are located within 100 feet of the offsite wetland, in conflict with the requirements of MPS WET1.2 and WET1.4. Based on a revised *Layout & Landscape Plan of Land* submitted at the 6/9/11 continued hearing and based on the revised *Landscape & Layout Plan of Land* received by Email on 6/17/11 (latest revision 6/17/11), the extent of the intrusion into the buffer is approximately 14 feet at the greatest width. This intrusion reflects the reconfiguration of the site in anticipation of the Town granting relief from the parking/impervious coverage requirements at the local level.

WETF4. The Commission finds that the proposed project qualifies for a Hardship Exemption pursuant to Section 23 of the Act and Section 9 of the *Enabling Regulations* in the application of MPS WET1.2 and MPS WET1.4. The Commission finds a hardship exists, and finds that a literal enforcement of the provisions of the Act and MPS WET1.2 and MPS WET1.4 to the project would involve substantial hardship based on the project's requirement under Yarmouth Zoning to provide an adequate turning radius for tractor-trailer trucks. The Commission also finds that desirable relief from MPS WET1.2 and MPS WET 1.4 may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act by allowing the minimum necessary intrusion into the 100-foot wetland buffer.

WETF5. The Commission also finds that based on the revised *Layout and Landscape Plan of Land* dated 6/25/10 as revised at the 6/9/11 public hearing and based on the revised *Landscape & Layout Plan of Land* received by Email on 6/17/11 (latest revision 6/17/11) that the proposed project complies to the maximum extent feasible with MPS WET 1.2 and MPS WET 1.4, and that the extent of disturbance/intrusion into the wetland buffer has been reduced. The Commission also finds that the Applicant is committed to seeking a further reduction in site development through mechanisms in Yarmouth's Zoning Bylaw, Section 300, but that the further reduction of development in the wetland buffer per Yarmouth's Zoning Bylaw is not possible at this time due to the local review being suspended by Cape Cod Commission review. The Commission also finds that the relief granted on MPS WET1.2 and MPS WET 1.4 relates directly to the nature of the identified hardship. Because of the potential to further reduce development on the site and the intrusion into the wetland buffer through the local review, the Commission finds is the relief granted is the minimum relief necessary to address the hardship.

WETF6. Because of the potential to further reduce development on the site through the local review, the Commission finds it appropriate to require the Applicant to provide the Commission

with written confirmation that an application under Section 300 of Yarmouth's Zoning Bylaw was made, and a written confirmation of Town's determination subject to that application with respect to further reductions in development on the site, including but not limited to areas to be disturbed, the building envelope, and paved/parking areas. The Commission also finds that it is appropriate to require the Applicant to seek a modification of this decision based on the Town's determination on the application to seek reductions in development on the site, including but not limited to areas to be disturbed, the building envelope, and paved/parking areas.

Hazardous Waste Management Findings

HWMF1. MPS WM1.1 *(Hazardous Materials/Waste Restrictions)* states that *"[d]evelopment and redevelopment that involves the use, treatment, generation, handling, storage, or disposal of Hazardous Materials and/or Hazardous Wastes, with the exception of Household Quantities or less, shall not be allowed within Wellhead Protection Areas and Potential Public Water Supply Areas, except as provided in WM1.2 and WM1.3.*

The amount of Hazardous Materials/Waste that is allowed by the *Household Quantity* limit referenced in MPS WM1.1 is:

> (a) 275 gallons or less of oil on site at any time to be used for heating of a structure, or to supply an emergency generator
> (b) 25 gallons or equivalent dry weight, total, of Hazardous Material(s) on site at any time, excluding oil for heating of a structure or to supply an emergency generator
> (c) A quantity of Hazardous Waste generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on the site.

WMF2. The Commission notes the Applicant has acknowledged in materials received as part of the Limited DRI scoping review and at the February 24, 2011 scoping public hearing a concern for protection of the Wellhead Protection Area from contamination by Hazardous Materials/Wastes. The application materials also state that that limits on Hazardous Materials and Hazardous Waste at the site in accordance with MPS WM1.1 would not pose a problem to completing the project, or marketing it to suitable tenants.

HWMF3. MPS WM1.2 (*Credit for Redevelopment*) allows redevelopment in Wellhead Protection Areas to exceed the RPP limits on Hazardous Materials and/or Hazardous Wastes provided the quantity is less than the quantity from the prior use. The Commission finds that because the proposed site in Yarmouth is vacant and undeveloped that MPS WM1.2 does not apply to this project.

HWMF4. MPS WM1.3 allows *"[d]evelopment and redevelopment within Wellhead Protection Areas that involves the use, treatment, handling, storage, or disposal of Hazardous Materials and/or Hazardous Wastes may be allowed to exceed the quantity limits of hazardous materials in WM1.1 up to, but not exceeding the amount, that the development or redevelopment permanently eliminates at another facility, project, or site within the same Wellhead Protection Area and provided adequate documentation of the volume eliminated is approved by the Commission.* The Commission finds that based on the Applicant's testimony at the 2/24/11 and 6/2/11 hearings, use of MPS WM1.3 is not necessary given the Applicant's intent and stated ability to comply with MPS WM1.1.

HWMF5. MPS WM1.4 (*Pollution Prevention and Emergency Response Plan*) states that *"[d]evelopment and redevelopment in Wellhead Protection Areas and Potential Public Water Supply Areas shall prepare a Pollution Prevention and Emergency Response plan for both the construction phase and normal operations that identifies potential contamination sources, threats of Hazardous Material and Hazardous Waste releases to the environment, describes material storage and handling details, containment and contingency plans for spill response, and documents regular inspection and employee education opportunities."*

The Applicant provided a Long Term Pollution Prevention Plan dated for the project's operational phase during the Limited DRI scoping review as part of the Stormwater Operations and Maintenance Plan. The Commission finds that this Pollution Prevention Plan can be augmented to address MPS WM1.4 for the project's construction phase as well. As such, the Commission finds that it is appropriate to condition the proposed project to comply with MPS WM1.4 prior to issuance by the Commission of a Preliminary Certificate of Compliance and prior to issuance of the local Building Permit.

HWMF6. MPS WM1.5 (*Compliance with Massachusetts Hazardous Waste Regulations*) requires that *"[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste..."* be in compliance with the state's Hazardous Waste regulations and specifies three items be provided to show compliance with this requirement for purposes of Commission review:

> (a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste;
> (b) a written plan or protocol to manage the Hazardous Waste prior to disposal; and
> (c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

The proposed use is warehouse; a broad category that the Commission finds can include the use, handling, generation, treatment or storage of Hazardous Wastes. As such, the Commission finds that it is appropriate to condition the project to require the Applicant or tenant(s) to comply with MPS WM1.5 prior to issuance by the Commission of a Final Certificate of Compliance and prior to issuance of the local Certificate of Use/Occupancy.

Energy Findings

EF1. The Commission finds that the Energy MPS that apply to this project as a DRI include MPS E1.2 (Designed to Earn Energy Star), MPS E1.3 (ASHRAE 90.1 – 2007, Section 5.4), and MPS E1.5 (On-site Renewable Energy Generation).

EF2. Based on the Design Review Comment Sheet Dated 6/8/11 submitted at the 6/9/11 continued Commission hearing, the Commission finds that Yarmouth's Design Review Committee supported the Applicant proposed intent to provide white trellises on the exterior of the building every 25 feet along the northern side and to provide additional windows and doors on the southern side. The Design Review Committee Sheet also indicated that the Commission would be conducting the energy efficient design review for the project.

EF3. The March 17, 2011 Limited DRI Review Scoping decision requires that the project be constructed in a manner consistent with the previously submitted Target Finder Energy Performance Results dated 1/6/11, which show an Energy Performance Rating of 98 out of 100. The Applicant also stated in testimony provided for the record and materials submitted as part

of the DRI/HDEX application that he intends to submit a Statement of Energy Design Intent (SEDI) to support MPS E1.2. The Commission finds that is appropriate to condition the project to require submission of a SEDI for Commission staff review and written approval prior to issuance of a Preliminary Certificate of Compliance by the Commission and prior to issuance of a local Building Permit.

EF4. The March 17, 2011 Limited DRI Scoping decision requires that the project be constructed consistent with a project specification from American Buildings that identifies Solar Reflectance, Thermal Emittance and a Solar Reflective Index. This information was provided as part of a December 7, 2010 letter from Holly Management. The sample saver system/R-value Insulation for Metal Buildings identified specifies R-Values of 30.8 (roof) and 23.1 (walls), which exceed the minimum R-values of ASHRAE 90.1-2007 by 56%, as stated by Grant Elgin, the Applicant's consultant, in an email dated December 27, 2011. The Commission finds this information meets the requirement of MPS E1.3.

EF5. Based on the Application materials and design narrative provided to date, including materials provided through the Limited DRI Scoping review, the Applicant will pursue the green building compliance option (Waiver Option C) for MPS E1.5. The requirements of that option the Applicant has selected are:

a) Installs ENERGY STAR compliant reflective roof, or vegetated roof
b) Re-use of an existing structure
c) Incorporate renewable energy
d) Incorporate passive solar design
e) Install and energy conserving landscape (for example, native species)
f) Compliance with ANSI Standards (6.4 – HVAC; 7.4 – Equipment Efficiency; 9.4 – Lighting)

EF6. The Applicant's materials provided by the Applicant's consultant, Grant Elgin, in an email dated December 27, 2010 stated that the white roof specified is ENERGY STAR compliant. The Commission finds that it is appropriate to require the Applicant submit the final specifications for the roof system for Commission staff review and approval to show compliance with MPS E1.2 prior to issuance by the Commission of a final Certificate of Compliance and prior to issuance at the local level of a Certificate of Use/Occupancy.

EF7. Based on the materials provided by the Applicant, the Commission finds that re-use of an existing building is required for construction of the proposed project.

EF8. The Commission finds that the Building Elevation Plans, prepared by Dan Ojala of DownCape Engineering dated 6/17/11 and revised 6/20/11, received by the Commission on June 22, 2011 by Email, which show a 15 KW rooftop PV array and a minimum of 75 square feet of south facing, Low-E windows and doors with awnings, is sufficient to satisfy the renewable energy and passive solar design requirements of MPS E1.5 – Waiver Option C. The Commission finds that it is appropriate to require that the Applicant provide for Commission staff review and approval the technical specification for the Low-E windows to be installed prior to issuance by the Commission of a Preliminary Certificate of Compliance and prior to issuance at the local level of a Building Permit.

EF9. The March 17, 2011 Limited DRI Scoping decision requires the Applicant to follow both the *Layout and Landscape Plan* prepared by Dan Ojala, DownCape Engineering, dated June 25, 2010 (revised June 17, 2011) and the *Low Impact Landscape Plan Narrative*, prepared by Dan

Ojala, DownCape Engineering, dated 2/7/11. Based on this information, the Commission finds that the projects proposed landscape plan is sufficient to meet MPS E1.5(C)(f).

EF10. The Commission finds that the Applicant has provided the information necessary to determine compliance with MPS E1.5 – Waiver Option C.

CONCLUSION

Based on the above findings, the Commission hereby concludes:

1. The project is eligible for a Hardship Exemption from MPS OS1.3 and MPS WET 1.2 and MPS WET1.4 as outlined in findings GF18, GF9, GF10, GF11, GF12, GF13 and GF14 and findings OSF2, OSF3, OSF4 and findings WETF3, WETF4, WETF5 and WETF6.

2. That upon satisfaction of the conditions identified in this decision, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan.

3. The project can be found consistent with Yarmouth's Local Comprehensive Plan as outlined in finding GF4. The proposed project can be found consistent with Yarmouth's local development by-laws/ordinances, as outlined in finding GF5.

4. The project is not located in a District of Critical Planning Concern as noted by finding GF6, and therefore can be considered to be consistent with this criterion.

5. That the probable benefits of the proposed project are greater than the probable detriments. This conclusion is supported by finding GF7.

CONDITIONS

The Commission hereby approves, with conditions, the DRI/Limited DRI/Hardship Exemption application of Gladstone LLC as represented by Stuart Bornstein for the proposed project located at 31 Aaron's Way, West Yarmouth, MA provided the following conditions are met:

General Conditions

GC1. This decision is valid for a period of 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.

GC2. The Applicant shall obtain all necessary federal, state, and local permits for the proposed project.

GC3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC4. No development work, as the term "development" is defined in the Cape Cod Commission Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

GC5. Prior to issuance of a Preliminary Certificate for any proposed "development" as defined by the Cape Cod Commission Act and as approved herein, the Applicant shall submit final plans as approved by state, federal, and local boards for review by Commission staff to determine their

consistency with this decision. If Commission staff determines that the final plans are not consistent with those plans approved as part of this decision, the Commission shall require that the Applicant seek a modification to this decision in accordance with the Modification section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC6. All development and redevelopment shall be constructed in a manner consistent with the following plans and other information attached hereto as Exhibit A:

- The Commission's March 17, 2011 Limited DRI Scoping decision for the project and site
- The revised *Layout & Landscape Plan of Land* dated 6/25/10 as revised at the June 9, 2011 public hearing and based on the revised *Landscape & Layout Plan of Land* received by Email on 6/17/11 (latest revision 6/17/11), as may be amended according to conditions WETC1, WETC2, WETC3 and WETC4, and with the incorporation of Commission approved grass seeding.
- The December 27, 2010 Email from Grant Elgin stating that the project will use an Energy Star compliant white roof
- *Building Elevation Plans*, prepared by Dan Ojala of DownCape Engineering dated 6/17/11 and revised 6/20/11, received by the Commission on June 22, 2011 by Email, which show a 15 KW rooftop PV array and a minimum of 75 square feet of south facing, Low-E windows and doors with awnings

Wetlands Conditions

WETC1. The Applicant shall provide the Commission with written confirmation that an application under Section 300 of Yarmouth's Zoning Bylaw was made, and a written confirmation of Town's determination subject to that application with respect to further reductions in development on the site. Such written confirmation of application to the Town and the Town's determination on that application shall be provided to the Commission within 6 months of the Commission's issuance of this decision.

WETC2. Should the Town of Yarmouth determine that the amount of developed area on the site can be reduced, the Applicant shall submit for Commission staff review a revised site plan showing the revised development envelope. The Applicant shall also seek a modification to this decision by the Commission in accordance with the Modification section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

WETC3. Should the Commission determine that the amount of developed area on the site has been reduced in a manner consistent with WETC1 and WETC2, the Applicant shall construct the development consistent with this plan. The Commission may also determine that a revision to the project which is consistent with Conditions WETC2 and WETC3 is a Minor Modification Type #1 according to the Modification section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

WETC4. Should the Town of Yarmouth determine that the amount of developed area on the site cannot be reduced, the Applicant shall submit for Commission staff review and approval, a revised site plan showing the revised development envelope. The Applicant shall also seek a

modification to this decision in accordance with the Modification section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

Open Space Conditions

OSC1. Prior to issuance of a Preliminary Certificate of Compliance by the Commission, and prior to issuance of the local Building Permit, the Applicant shall provide to the Commission a cash contribution of $10,000.00. Such payment shall be made payable to *Barnstable County Treasurer*. This cash contribution shall be utilized for open space protection in the Town of Yarmouth.

Hazardous Waste Management Conditions

WMC1. To comply with MPS WM1.1, the Applicant and/or all tenant(s) of the proposed site shall be limited to no more than a Household Quantity of Hazardous Materials and/or Hazardous Wastes on site at any time as defined by the 2009 RPP (as amended March 2011) as described below:

(a) 275 gallons or less of oil on site at any time to be used for heating of a structure, or to supply an emergency generator

(b) 25 gallons or equivalent dry weight, total, of Hazardous Material(s) on site at any time, excluding oil for heating of a structure or to supply an emergency generator

(c) A quantity of Hazardous Waste generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on the site

HWMC2. To comply with MPS WM1.4, prior to issuance by the Commission of a Preliminary Certificate of Compliance and prior to issuance of the local Building Permit, the Applicant shall submit for Commission staff review and approval a revised written Long Term Pollution Prevention Plan for both the construction phase and normal operations that identifies potential contamination sources, threats of Hazardous Material and Hazardous Waste releases to the environment, describes material storage and handling details, containment and contingency plans for spill response, and documents regular inspection and employee education opportunities. Until the Applicant submits such a revised Plan and the Commission staff approves it in writing, no Preliminary Certificate of Compliance shall be issued.

HWMC3. To comply with MPS WM1.5, prior to issuance of a Final Certificate of Compliance by the Commission, and prior to issuance of the local Certificate of Use/Occupancy, the Applicant and/or all tenant(s) shall submit for Commission staff review and approval:

(a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste
(b) a written plan or protocol to manage the Hazardous Waste prior to disposal
(c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

Until the Applicant and/or tenant(s) submit such information, and the Commission staff approves it in writing, no Final Certificate of Compliance shall be issued.

Energy Conditions

EC1. To comply with MPS E1.2, and the March 17, 2011 Limited DRI Scoping decision, prior to issuance by the Commission of a Final Certificate of Compliance, and prior to issuance by the Town of a Certificate of Use/Occupancy, the Applicant shall submit for Commission staff review and approval a Statement of Energy Design Intent prepared by a registered architect or engineer.

EC2. To comply with MPS E1.3, the project shall be constructed consistent with the wall panel system specifications from American Buildings, provided as part of a December 7, 2010 letter from Holly Management and which indicates the R-Values of 30.8 (roof) and 23.1 (walls).

EC3. To Comply with MPS E1.5, the project shall comply with, or provide as noted, the following elements:

i. Submit the technical specifications for the ENERGY STAR compliance reflective roofing system prior to receiving a Preliminary Certificate of Compliance from the Commission and prior to issuance of a Building Permit, and
ii. Install a minimum 15 KW, rooftop mounted solar PV array, as depicted in *Building Elevation Plans* (dated 6/17/11 as revised 6/20/11) submitted by the Applicant by Email on 6/22/11, prior to receiving a Final Certificate of Compliance from the Commission and prior to receiving a Certificate of Use/Occupancy from the Town, and
iii. Re-use the existing building, located at 77 High School Road Extension, Hyannis, MA and
iv. Maintain a minimum of nine (9) south facing windows and awnings or overhangs (at least 24" x 36"), two half-lite pass doors, and two overhead doors as depicted on the Building Elevation Plans prepared by Dan Ojala of DownCape Engineering (dated 6/17/11 revised 6/20/11) as received by Email to the Commission on 6/22/11, and
v. Comply with the *Layout and Landscape Plan*, dated June 25, 2010 (revised June 17, 2011) and the *Low Impact Landscape Plan Narrative*, both prepared by Dan Ojala, DownCape Engineering, dated 2/7/11.
vi. Comply with ANSI standards 6.4 – HVAC; 7.4 – Equipment Efficiency; 9.4 – Lighting.

Peter Graham, Commission Chair

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss July 7, 2011

Before me, the undersigned notary public personally appeared Peter Graham in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [_] photographic identification with signature issued by a federal or state governmental agency, [_] oath or affirmation of a credible witness, or [✓] personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires:

10.13.11